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ECONOMIC AND ENVIRONMENTAL QUESTIONS: FOLLOW-UP TO GENERAL ASSEMBLY RESOLUTION 50/106: BUSINESS AND DEVELOPMENT

Argentina, Bulgaria, Canada, Costa Rica, Mexico**, Nicaragua, Paraguay, Philippines, Poland, Russian Federation, South Africa, United States of America and Venezuela: revised draft resolution

Corruption and bribery in international commercial transactions

The Economic and Social Council

Recommends to the General Assembly the adoption of the following draft resolution:

*United Nations Declaration Against Corruption and Bribery in International Commercial Transactions

*The General Assembly,

*Recalling its resolution 3514 (XXX) of 15 December 1975, in which it, inter alia, condemned all corrupt practices, including bribery, in international commercial transactions, reaffirmed the right of any State to adopt legislation and to investigate and take appropriate legal action, in

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accordance with its national laws and regulations, against such corrupt practices, and called upon all Governments to cooperate to prevent corrupt practices, including bribery,

"Recalling also the further work carried out by the General Assembly and the Economic and Social Council on the issue of illicit payments and on promoting the development of a code of conduct for transnational corporations, consideration of which helped call attention to and raise international awareness of the adverse consequences of bribery in international commercial transactions,

"Recalling further General Assembly resolution 50/106 of 20 December 1995, in which the Assembly recommended that the Economic and Social Council consider the draft international agreement on illicit payments at its substantive session of 1996 and report to the Assembly at its fifty-first session,

"Welcoming the steps taken at the national, the regional, and the international level to fight corruption and bribery, as well as recent developments in international forums that have further advanced international understanding and cooperation regarding corruption and bribery in international commercial transactions,

"Noting the adoption in March 1996 by member States of the Organization of American States of the Inter-American Convention against Corruption, 1/ which includes an article on transnational bribery,

"Noting also significant continuing work relevant to and consistent with the objectives of the present resolution in other regional and international forums, such as the continuing work of the Council of Europe and the European Union to combat international bribery, as well as the commitment by the member countries of the Organisation for Economic Cooperation and Development to criminalize bribery of foreign public officials in international commercial transactions in an effective and coordinated manner and further examine the modalities and appropriate international instruments to facilitate criminalization, and to re-examine the tax deductibility of such bribes with the intention of denying such tax deductibility in the member countries that do not already do so,

"1. Adopts the United Nations Declaration Against Corruption and Bribery in International Commercial Transactions, the text of which is annexed to the present resolution;

"2. Notes the work being undertaken by the United Nations and in other international and regional forums to address the problem of corruption and bribery in international commercial transactions, and invites all States concerned to pursue the completion of such work;

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"3. Invites Member States, in accordance with the Declaration, to take appropriate measures and cooperate at all levels to combat corruption and bribery in international commercial transactions;

"4. Requests the Economic and Social Council and its subsidiary bodies, in particular the Commission on Crime Prevention and Criminal Justice:

"(a) To examine ways, including through legally binding international instruments, without in any way precluding, impeding or delaying international, regional or national actions, to further the implementation of the present resolution and the annexed Declaration, so as to promote the criminalization of corruption and bribery in international commercial transactions;

"(b) To keep the issue of corruption and bribery in international commercial transactions under regular review;

"(c) To promote the effective implementation of the present resolution;

"5. Invites other bodies of the United Nations system, including the United Nations Conference on Trade and Development, whose competence extends to this matter to take action as appropriate within their mandates to promote the objectives of the present resolution and the Declaration;

"6. Encourages private and public corporations, including transnational corporations, and individuals engaged in international commercial transactions to cooperate in the effective implementation of the Declaration;

"7. Requests the Secretary-General to inform Member States, the relevant bodies and the specialized agencies of the United Nations system, and international, regional and non-governmental organizations, of the adoption of the present resolution, to encourage action towards making its provisions widely known and to promote its effective implementation;

"8. Also requests the Secretary-General to prepare a report, for consideration by the General Assembly at its fifty-third session, on the progress made towards implementation of the present resolution and the steps taken by Member States, international and regional organizations and other relevant institutions to combat corruption and bribery in international commercial transactions; on the results of the work in this regard undertaken by the Commission on Crime Prevention and Criminal Justice and other bodies of the United Nations system; on how the incidence of corruption and bribery in international commercial transactions impacts on economic and social development and environmental protection; and on measures undertaken in accordance with the present resolution to promote social responsibility and the elimination of corruption and bribery in international commercial transactions;

"9. Invites Member States and relevant international, regional and non-governmental organizations to provide relevant information to assist the Secretary-General in preparing the above-mentioned report;

"10. Decides to include in the provisional agenda of its fifty-third session, under the item 'Business and development', a review of the report of the Secretary-General concerning the implementation of the present resolution.

"Annex

"UNITED NATIONS DECLARATION AGAINST CORRUPTION AND BRIBERY IN INTERNATIONAL COMMERCIAL TRANSACTIONS

"The General Assembly,

"Convinced that a stable and transparent environment for international commercial transactions in all countries is essential for the mobilization of investment, finance, technology, skills and other important resources across national borders, in order, inter alia, to promote economic and social development and environmental protection,

"Recognizing the need to promote social responsibility and appropriate standards of ethics on the part of private and public corporations, including transnational corporations, and individuals engaged in international commercial transactions, inter alia, through observance of the laws and regulations of the countries in which they conduct business, and taking into account the impact of their activities on economic and social development and environmental protection,

"Recognizing also that effective efforts at all levels to combat and avoid corruption and bribery in all countries are essential elements of an improved international business environment, that they enhance fairness and competitiveness in international commercial transactions and form a critical part of promoting transparent and accountable governance, economic and social development and environmental protection in all countries, and that such efforts are especially pressing in the increasingly competitive globalized international economy,

"Solemnly proclaims the United Nations Declaration Against Corruption and Bribery in International Commercial Transactions as set out below.

"Member States, individually and through international and regional organizations, taking actions subject to each State's own constitution and fundamental legal principles and adopted pursuant to national laws and procedures, commit themselves:

"1. To take effective and concrete action to combat all forms of corruption, bribery and related illicit practices in international commercial transactions, in particular to pursue effective enforcement of existing laws prohibiting bribery in international commercial transactions, to encourage the adoption of laws for those purposes where they do not

exist, and to call upon private and public corporations, including transnational corporations, and individuals within their jurisdiction engaged in international commercial transactions to promote the objectives of this Declaration;

"2. To criminalize in an effective manner acts of bribery in international commercial transactions of any public official or elected representative, by any private or public corporation or individual, taking action where appropriate in a coordinated manner, but without in any way precluding, impeding or delaying international, regional or national actions to further the implementation of this Declaration;

"3. Bribery may include, in particular, the following elements:

"(a) The offer, promise or giving of any payment, gift or other advantage, directly or indirectly, by any private or public corporation, including a transnational corporation, or individual from a State to any public official or elected representative of another country as undue consideration for performing or refraining from the performance of that official's or representative's duties in connection with an international commercial transaction;

"(b) The soliciting, demanding, accepting or receiving, directly or indirectly, by any public official or elected representative of a State from any private or public corporation, including a transnational corporation, or individual from another country of any payment, gift or other advantage, as undue consideration for performing or refraining from the performance of that official's or representative's duties in connection with an international commercial transaction;

"4. To deny, in countries that do not already do so the tax deductibility of bribes paid by any private or public corporation or individual of a Member State to any public official or elected representative of another country;

"5. To develop or maintain accounting standards and practices that improve the transparency of international commercial transactions, and that encourage private and public corporations, including transnational corporations, and individuals engaged in international commercial transactions to avoid and combat corruption, bribery and related illicit practices;

"6. To develop or to encourage the development, as appropriate, of business codes, standards or best practices that prohibit corruption, bribery and related illicit practices in commercial transactions;

"7. To examine establishing illicit enrichment by public officials or elected representatives as an offence;

"8. To cooperate and afford one another the greatest possible assistance in connection with criminal investigations and other legal proceedings brought in respect of corruption and bribery in international

commercial transactions. Mutual assistance shall include, as far as permitted under national laws or as provided for in bilateral treaties or other applicable arrangements of the affected countries, and taking into account the need for confidentiality as appropriate:

"(a) Production of documents and other information, taking of evidence and service of documents relevant to criminal investigations and other legal proceedings;

"(b) Notice of the initiation and outcome of criminal proceedings concerning bribery in international commercial transactions to other States that may have jurisdiction over the same offence;

"(c) Extradition proceedings where and as appropriate;

"9. To take appropriate action to enhance cooperation to facilitate access to documents and records about transactions and about identities of persons engaged in bribery in international commercial transactions;

"10. To ensure that bank secrecy provisions do not impede or hinder criminal investigations or other legal proceedings relating to corruption, bribery or related illicit practices in international commercial transactions, and that full cooperation is extended to Governments that seek information on such transactions;

"11. Actions taken in furtherance of this Declaration shall respect fully the national sovereignty and territorial jurisdiction of Member States, as well as the rights and obligations of Member States under existing treaties and international law, and shall be consistent with human rights and fundamental freedoms;

"12. Member States agree that actions taken by them to establish jurisdiction over acts of bribery of foreign public officials in international commercial transactions should be consistent with principles of customary international law regarding the extraterritorial application of a State's laws."